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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re W.A., a Person Coming Under the Juvenile  
Court Law.

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.A.,

Defendant and Appellant.

F057410

(Super. Ct. No. JJV062469A)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Tulare County. Charlotte A. Wittig, Commissioner.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, and Jason Chu, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Vartabedian, A.P.J., Levy, J., and Dawson, J.

J.A. (father) appeals from an order terminating his parental rights (Welf. & Inst. Code, § 366.26) as to his son W.<sup>1</sup> Father contends the court erred by finding W. adoptable and rejecting father's argument that he had established such a relationship with W. that termination would be detrimental to the child. On review, we affirm.

### **PROCEDURAL AND FACTUAL HISTORY**

Respondent Tulare County Health and Human Services Agency (agency) initiated the underlying dependency proceedings in September 2007. At that time, the agency took then one-month-old W. into protective custody because his parents were homeless and using methamphetamine. W. was initially placed with a foster parent interested in adopting him.

In November 2007, the juvenile court adjudged W. a dependent child and ordered reunification services for father only. His services plan required him to complete parenting instruction and a substance abuse evaluation, submit to random drug testing, and participate in two, one-hour supervised visits each week. At approximately the same time, W. was placed with a foster family, identified as non-related extended family members whom father previously recruited through his church to provide a home for W. W. has remained in that family's care ever since.

#### ***Reunification Efforts***

By the six-month review stage in April 2008, father completed his court-ordered services and tested negative for drugs. However, the agency discovered father was residing with W.'s mother who had not addressed her substance abuse. When told he could not have unsupervised visitation with W. as long as mother was in the home, father explained mother was only temporarily living there. At the six-month review hearing, the court expressly found father's association with mother was detrimental to W. The

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

court nevertheless continued services for another six months and granted the agency discretion to increase the length and duration of visitation.

In its 12-month review report, the agency recommended the court terminate father's services and set a section 366.26 hearing to select and implement a permanent plan for W. Although father denied having continued contact with mother, an agency investigator found mother pregnant and hiding in a closet at father's home during an unannounced visit.

The child's social worker also described in her report the child's current circumstances. W. was thriving in his placement. He was a "chubby, beautiful boy with bright blue, inquisitive eyes. As the baby of the family, W[.] is pampered by an older foster sister as well as the substitute care provider. The love in this family was evident as soon as this social worker entered the front door, where a large family portrait hangs complete with a bubbling baby W[.] sitting in the middle of the large family. [¶] Despite fears that W[.] may have been drug exposed before he was born, W[.] appears to be developmentally on track and not to have any special needs at this time. There was also fear regarding W[.]'s hearing, but testing has ruled out any hearing problems. The child is a healthy one year old boy who is clearly bonded to his foster family."

### ***First Adoption Assessment***

Meanwhile, the agency filed with the court an adoption assessment of one-year-old W. prepared by an adoption social worker in August 2008. According to the assessment, W. had no reported medical, developmental, emotional or behavioral issues. He was stable in his current placement which began nine months earlier in November 2007.

The adoption social worker had discussed adoption with the foster family who was able and willing to complete an adoption home study and had attended an orientation,

apparently on adoption. The foster family was willing to and capable of providing W. a stable and permanent home through adoption and wished to do so.

It was the adoption social worker's opinion that adoption appeared to be the best permanent plan at the time. She also remarked: W. was one year old, had been placed with the foster family for nine months, and had no medical or behavioral issues that would deter the foster family from adoption. The adoption social worker concluded W. was adoptable and his case should be transferred to the adoptions unit if the court set a section 366.26 hearing.

### ***Orders Terminating Services and Setting of a Section 366.26 Hearing***

At a November 2008 contested review hearing, the juvenile court admitted narratives of the pleasant visits father had with W. The court nevertheless terminated services for father and set the section 366.26 hearing. The court also directed that visitation remain as previously ordered, i.e. two weekly, one-hour supervised visits.

### ***"366.26 WIC Report"***

A different adoption social worker prepared a "366.26 WIC Report" prior to the hearing set for February 2009. Like his predecessor, this adoption social worker identified adoption of W. by the foster family as in the child's best interest. W. was secure and thriving in the placement and the foster family was committed to adopting him. The worker added the foster family demonstrated awareness of W.'s background "and special medical needs" as well as an ability to successfully address them.

"It is the assessment of Tulare County Adoptions and this writer that W[.] is a special needs/medically fragile child made adoptable by the love and commitment of his prospective adoptive caretakers. The Agency holds faith in the adoptive family's ability to commit to the permanent care of the minor regardless of what the future holds."

The remainder of the report did not specifically explain the factual basis for the assessment that W. was a special needs/medically fragile child. It did reveal W. was

diagnosed with asthma and required frequent breathing treatments “both ongoing and at times emergent.” The report added in this respect that the foster family had been diligent in their care of W. In addition, the report stated W. had a history of in utero drug exposure and had been exhibiting head banging behavior to the front of his head as well as instantaneous bruising. The foster family, a registered nurse, the agency, and W.’s pediatrician were following up with appropriate and still pending medical referrals. Otherwise, W. was reported to be a happy and active little boy and he was affectionate and playful with the foster family.

The report also contained a positive preliminary assessment of the foster parents’ eligibility and commitment to adopt W. (§ 366.21, subd. (i)(1)(D).) The foster parents, now identified as W.’s “prospective adoptive parents,” were in their late 30’s and previously adopted three children. The prospective adoptive parents had no criminal, child abuse or child neglect history. They were motivated as well as committed to adopt W. having raised him for the majority of his life.

In another portion of the report, the adoption social worker stated:

“The names of the prospective adoptive parents are confidential per State Adoptions Program Regulations Administrative Requirements, 35049; Releasing Information from and Adoption Case Record (b) an adoption case record is confidential. (1) An adoption case record is established when (B) An Agency accepts the completed and signed adoption application for a prospective adoptive parent or parents.”

The report also disclosed W. had “no beneficial contact” with his parents. His visits with father were described as “reasonable and uneventful.” W. initially would protest separation from the prospective adoptive parent but father was able to refocus W. with toys and play. During the visits, the child was appropriate and appeared to enjoy playing with the toys in the room. He was active and happy. Father initiated interaction. He was described as “consistently appropriate, supportive and engaged.” W. consistently left the visits “without protest” and “joyfully” returned to the prospective adoptive parent.

### ***Section 366.26 Hearing***

At the section 366.26 hearing conducted in March 2009, the parties submitted the matter on the agency's reports and the court took judicial notice of the entire case file. Father's counsel urged the court to find the beneficial relationship exception to termination (§ 366.26, subd. (c)(1)(B)(i)) applied. She argued father maintained regular visits and contact with W. and took exception to the report's statement that W. had no beneficial contact with the parents. She pointed out that the report also stated father was consistently appropriate, supportive and engaged.

Following closing arguments, the court noted father no doubt loved W. However, father failed to carry his burden of establishing he had a parental relationship with W. Finding clear and convincing evidence that it was likely W. would be adopted, the court terminated parental rights.

## **DISCUSSION**

### ***I. Adoptability***

Focusing on the statement in the 366.26 WIC Report that W. was "a special needs/medically fragile child made adoptable by the love and commitment of his prospective adoptive caretakers," father contends there was insufficient evidence that W. would be adopted within a reasonable time. In father's view, this language as well as the balance of the report means W. was only specifically adoptable by the prospective adoptive parents, rather than generally adoptable. With this as his premise, father goes on to argue it was imperative for the court to have evidence regarding when the prospective adoptive parents planned to commence a home study so that it could find adoption would occur within a reasonable time. A statement of the prospective adoptive parents' commitment to adopt W. and the social worker's "faith" in that commitment will not suffice. In father's view, the prospective adoptive parents had not taken the first steps

towards adopting W. As discussed below, we disagree and conclude there was substantial evidence of the likelihood of W.'s adoption within a reasonable time.

**A.**

Before reaching the merits of father's argument, we take this opportunity to address references in the agency's 366.26 WIC Report to the social worker's "faith" in the prospective adoptive parents' commitment to adopt. This is not the first time we have read such comments in the agency's reports. We hope, nevertheless, it will be the last.

A social worker's faith or confidence in someone or something is meaningless in terms of the adoptability issue before the trial court and does little more than create a needless appellate issue. The trial court must have clear and convincing evidence regarding the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt (§ 366.21, subd. (i)(1)(C)); *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649) as well as the eligibility and commitment of any identified prospective adoptive parent (§ 366.21, subd. (i)(1)(D)). A social worker's faith or confidence adds nothing to the analysis required, of the likelihood that the child will be adopted if parental rights are terminated (§ 366.21, subd. (i)(1)(G)).

**B.**

The law does not require a juvenile court to find a dependent child "generally adoptable" before terminating parental rights. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) Thus, the fact that the agency's report does not expressly describe W. as generally adoptable is not significant.

All that is required is clear and convincing evidence of the likelihood that the dependent child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 406.) The likelihood of adoptability *may* be satisfied by a showing that a child is *generally* adoptable, that is, independent of whether there is a

prospective adoptive family waiting in the wings. However, the case law also recognizes that the juvenile court may properly consider a prospective adoptive parent's willingness to adopt as evidence that the child is likely to be adopted within a reasonable time. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313; *Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649–1650.)

Although the agency's latest report characterized W. as "a special needs/medically fragile child," father overlooks the balance of the record supporting a conclusion that it was likely W. would be adopted within a reasonable time. The child was an attractive, active, and thriving toddler, who, but for his asthma, had no medical problems. He had experienced in utero drug exposure but at most there was conflicting evidence regarding the impact of such exposure on his adoptability. W. was also developmentally on track and generally a happy child. There was the report of apparently recent head banging behavior but no indication that this was a serious problem which would make W. an undesirable child to adopt.

### C.

In addition, W. had been placed for most of his life with his foster, now prospective adoptive parents. The agency's 366.26 WIC report included a preliminary assessment of the prospective adoptive parents, as required by section 366.21, subdivision (i)(1)(D). The prospective adoptive parents were well aware of and had shown an ability to successfully address W.'s needs. The mutual love and attachment that they shared with W. was evident. The evidence also was undisputed regarding their eligibility and commitment to adopt W. In addition, the prospective adoptive parents had previously adopted three other children and there was no evidence of any obstacles to their adopting W. Thus, for these reasons as well, there was substantial evidence that W. was likely to be adopted within a reasonable time.



**D.**

To the extent father argues it was imperative for the court to have evidence regarding when the prospective adoptive parents planned to commence a home study so that it could find adoption would occur within a reasonable time, this argument fails both on legal and factual grounds.

*In re Brandon T.* (2008) 164 Cal.App.4th 1400 (*Brandon T.*), the case father cites does not stand for the proposition he claims. The *Brandon T.* court rejected an argument that the absence of a completed home study for a child's only potential adoptive family constituted a legal impediment to adoption. (*Id.* at p. 1410.) The appellant in *Brandon T.* alternatively argued there was insufficient evidence as to when a home study would be completed, so it was impossible for the court to know if the adoption would be finalized within a reasonable time. (*Ibid.*) The appellate court did acknowledge the *In re Zeth S.*, rule that, as we have previously stated, there must be clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time (*In re Zeth S.*, *supra*, 31 Cal.4th at p. 406). The *Brandon T.* court it did not go on to hold there must be evidence that the home study process had been started or would be completed within a reasonable time. At most, the *Brandon T.* court observed that, even if the home study process had just begun, there was nothing to suggest there were any obstacles to completing it in a routine manner. (*Brandon T.*, *supra*, 164 Cal.App.4th at p. 1411.) It added "[a]bsent any evidentiary basis for questioning the feasibility of the minors adoptive placement," the evidence sufficiently supported the adoptability finding. (*Ibid.*)

In addition, father overlooks evidence in the record which rebuts his claim that the prospective adoptive parents had not taken the first steps towards adopting W. According to the 2008 adoption assessment, the prospective adoptive parents were willing to complete an adoption home study and had attended an adoption orientation. Also the reasonable inference (*In re Laura F.* (1983) 33 Cal.3d 826, 833) to be drawn from the

366.26 WIC Report's statement -- that the prospective adoptive parents' names were confidential -- was that the agency had received an adoption application from the prospective adoptive parents. As we previously quoted from that record:

“The names of the prospective adoptive parents are confidential per State Adoptions Program Regulations Administrative Requirements, 35049; Releasing Information from and Adoption Case Record (b) *an adoption case record is confidential. (1) An adoption case record is established when (B) An Agency accepts the completed and signed adoption application for a prospective adoptive parent or parents.*” (Italics added.)

In any event, there was no evidentiary basis for questioning the feasibility of W.'s adoptive placement. (*Brandon T.*, *supra*, 164 Cal.App.4th at p. 1411.)

## ***II. Parent/Child Relationship Exception to Termination***

Father also argues there was no substantial evidence to support the court's finding that he did not have a parental relationship with W. Father further claims there was substantial evidence that W. had a substantial positive emotional attachment to him so as to warrant a finding of detrimental under section 366.26, subdivision (c)(1)(B)(i). Once again, we disagree with father.

Although section 366.26, subdivision (c)(1)(B) acknowledges that termination may be detrimental under specifically designated circumstances, a finding of no detriment is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) It is the parent's burden to show that termination would be detrimental under one of the exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) Thus, when a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is not one of substantial evidence, as father argues here, but whether the juvenile court abused its discretion. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) On review of the record as summarized above, we conclude the trial court did not abuse its discretion.

At most, the record established that father maintained regular twice-weekly, one hour visits with W. from the time he was one month to approximately 18 months old and those visits were pleasant experiences for both father and son. However, there was no evidence that W. had a substantial, positive emotional attachment to father and thus would so benefit from continuing those visits that it would outweigh the benefits of a stable and permanent home through adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

“‘If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

Here no such evidence was introduced.

#### **DISPOSITION**

The order terminating parental rights is affirmed.